

## Message Text

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TO AMEMBASSY TOKYO

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E.O. 11652: N/A

TAGS: EAIR, JA

SUBJECT: CIVAIR: CAB LETTER REGARDING OFF-ROUTE CHARTERS

1. EMBASSY IS REQUESTED TO PRESENT TEXT OF CAB'S APRIL 15  
LETTER TO JAL'S WASHINGTON ATTORNEY, LAURENCE SHORT, CON-  
CERNING BOARD'S POLICY RE OFF-ROUTE CHARTERS TO APPROPRIATE  
GOJ AUTHORITIES.

2. TEXT OF LETTER: BY LETTER DATED MARCH 14, 1977, AS  
AMENDED MARCH 24, 1977, JAL WAS ADVISED THAT EFFECTIVE  
APRIL 15, 1977, THE BOARD HAD TENTATIVELY CONCLUDED TO  
DENY APPLICATIONS FILED BY JAL FOR OFF-ROUTE CHARTER OPERA-  
TIONS BETWEEN THE UNITED STATES AND HANEDA, THE SLOT TIME  
FOR WHICH BECAME AVAILABLE AS A RESULT OF BLOCKING OFF  
JAL'S SCHEDULED FLIGHTS, PENDING FURTHER DISCUSSION OF THE  
LANDING SLOT PROBLEM AT HANEDA AND ITS EFFECT UPON U.S.

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SUPPLEMENTAL AIR CARRIER OPERATIONS IN DISCUSSIONS WITH  
JAPANESE OFFICIALS WHICH WERE TO TAKE PLACE IN EARLY APRIL.  
THIS PROPOSED POLICY WAS BASED UPON THE BOARD'S TENTATIVE  
CONCLUSION THAT BECAUSE THE SLOTTING PRACTICES AT HANEDA  
HAD THE EFFECT OF DENYING U.S. SUPPLEMENTAL CARRIERS THE  
ABILITY TO PERFORM CHARTER FLIGHTS WITHIN THE QUOTA AUTHOR-  
IZED BY THE JAPANESE GOVERNMENT, THE FINDING OF RECIPROCITY,  
WITHIN THE CONTEXT OF SECTION 212.6 OF THE BOARD'S

ECONOMIC REGULATIONS, WHICH IS REQUIRED TO PERMIT JAL TO

CONDUCT OFF-ROUTE CHARTER OPERATIONS INVOLVING HANEDA AIRPORT, COULD NOT BE MADE. IN THIS REGARD, THE BOARD NOTED TWO SIGNIFICANT FACTORS. FIRST, IT NOTED THAT THE EARLY PATTERN OF DENIALS OF SUPPLEMENTAL AIR CARRIER OPERATIONS BY THE JCAB, AND THE SUBSEQUENT UNDERTAINTY CONCERNING SLOT TIME AT HANEDA EFFECTIVELY EXCLUDED SUPPLEMENTAL CARRIERS FROM THE U.S.-JAPAN CHARTER MARKET, DESPITE THE FACT THAT THE PROPOSED OPERATIONS WERE WITHIN THE QUOTA AUTHORIZED BY THE JAPANESE GOVERNMENT. SECOND, IT NOTED THAT JAL'S TECHNIQUE OF BLOCKING OFF ITS SCHEDULED FLIGHTS APPEARED TO ACCOUNT FOR ITS SIGNIFICANT INCREASE IN OFF-ROUTE CHARTER OPERATIONS IN 1976. BY BLOCKING OFF ITS SCHEDULED FLIGHTS, JAL COULD ASSURE CHARTERERS OF ITS ABILITY TO OPERATE FLIGHTS BETWEEN THE UNITED STATES AND JAPAN, THEREBY DIVERTING LEGITIMATE TRAFFIC FROM THE SUPPLEMENTAL CARRIERS WHO COULD AFFORD CHARTERERS NO SUCH ASSURANCES.

ON MARCH 28, 1977, AS AMENDED MARCH 31, JAL PETITIONED FOR RECONSIDERATION OF THE BOARD'S PROPOSED POLICY WITH RESPECT TO JAL'S OFF-ROUTE CHARTER OPERATIONS. JAL CLAIMS THAT THE SLOTTING PROCEDURES AT HANEDA DO NOT DISCRIMINATE AGAINST U.S. SUPPLEMENTAL CARRIERS. IN SUPPORT OF THIS POSITION, JAL STATES THAT U.S. CARRIERS ARE ALLOTTED 328 SLOTS PER WEEK JUST FOR THEIR TRANSPACIFIC OPERATIONS, COMPARED TO JAL'S 280 SLOTS WHICH MUST ACCOMMODATE ITS LIMITED OFFICIAL USE  
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TRANSPACIFIC, DOMESTIC, POLAR, AS WELL AS SILK ROUTE FLIGHTS. CONSEQUENTLY, JAL CONTENDS THAT U.S. CARRIERS HAVE AVAILABLE THREE TIMES AS MANY SLOTS AS JAL FOR TRANSPACIFIC OPERATIONS. FURTHERMORE, JAL STATES THAT THE JCAB DETERMINES HOW JAL CAN BEST SERVE JAPANESE COMMERCE, THAT IS, WHAT PRIORITY SHOULD BE ACCORDED JAL'S SCHEDULED AND CHARTER OPERATIONS. THUS, IT IS JAL'S POSITION THAT THE BOARD HAS NO RIGHT TO QUESTION THE JCAB'S ACTIONS, ABSENT COMPLAINTS THAT JAL IS NOT FULFILLING ITS SCHEDULED OBLIGATIONS OR EVIDENCE THAT JAL'S CHARTER OPERATIONS BEAR AN UNREASONABLE RELATIONSHIP TO ITS SCHEDULED OPERATIONS. UNDER THESE CIRCUMSTANCES, JAL SUGGESTS THAT THE REAL PROBLEM IS THAT THE UNITED STATES IS NOT SATISFIED WITH THE NUMBER OF SLOTS AVAILABLE TO THE FIVE CARRIERS IT HAS AUTHORIZED TO PROVIDE CHARTER SERVICE TO AND FROM JAPAN, AND UNREALISTICALLY EXPECTS THE JCAB TO TRANSFER SLOTS AVAILABLE TO JAL AND OTHER CARRIERS SERVING JAPAN IN ORDER TO FACILITATE THE UNITED STATES' DESIRE TO INCREASE ITS SHARE OF THE US-JAPAN CHARTER MARKET. INSTEAD, JAL ASSERTS THAT THE UNITED STATES HAS AVAILABLE PROCEDURES UNDER WHICH THE AUTHORIZED US CARRIERS COULD ALLOCATE THE AVAILABLE LANDING SLOTS AT HANEDA AMONG THEMSELVES. IN

ADDITION, JAL REQUESTS THAT, SHOULD THE BOARD, NONETHELESS, ADOPT ITS TENTATIVE POLICY, ANY APPLICATIONS FOR OFF-ROUTE OPERATIONS CONTRACTED FOR PRIOR TO FINAL ADOPTION OF THE POLICY BE GRANTED SINCE, AT THE TIME THEY WERE CONTRACTED, JAL WAS UNAWARE OF ANY RESTRICTION TO BE IMPOSED ON ITS OPERATIONS.

BY LETTER TO THE BOARD DATED APRIL 1, 1977, THE FLYING TIGER LINE (FTL) RESPONDED TO THE BOARD'S PROPOSED LETTER INSOFAR AS IT DISCUSSES THE PRACTICE OF BLOCKING OFF SCHEDULED CARGO FLIGHTS. IN EFFECT, FTL CLAIMS THAT THE IMBALANCE OF THE TRANSPACIFIC CARGO MARKET IN THE EAST-BOUND DIRECTION NECESSITATES THE PRACTICE OF BLOCKING OFF LIMITED OFFICIAL USE  
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WESTBOUND SCHEDULED FLIGHTS FOR THE OPERATION OF CHARTER FLIGHTS IN ORDER TO SUSTAIN AN EFFICIENT OPERATION BETWEEN THE TWO CONTINENTS; AND THAT THE BLOCKING OFF TECHNIQUE IS A FREQUENT, ECONOMICALLY JUSTIFIED, AND APPROPRIATE PRACTICE OF MOST SCHEDULED CARRIERS (NOT JUST JAL) WHERE TRAFFIC IN A MARKET IS DIRECTIONALLY IMBALANCED. FURTHERMORE, FTL CHALLENGES THE BOARD'S RATIONALE THAT CANCELED SCHEDULED OPERATIONS BE REALLOCATED FOR SUPPLEMENTAL CARRIER OPERATIONS SINCE SUCH ACTION WOULD PRECLUDE SCHEDULED CARRIERS FROM EFFICIENTLY SERVING THEIR EAST-BOUND SCHEDULED DEMAND. FINALLY, FTL STATES THAT THE BOARD'S CONCLUSION THAT JAL'S BLOCKING OFF PRACTICES HAVE PRECLUDED U.S. CARRIERS FROM EFFECTIVELY COMPETING IN THE U.S.-JAPAN CHARTER MARKET AND THAT JAL HAS A MONOPOLY ON U.S.-JAPAN CHARTERS IS NOT WARRANTED, SINCE IT ACTIVELY COMPETES WITH JAL FOR WESTBOUND CATTLE CHARTERS (THE MAJORITY OF JAL'S OFF-ROUTE OPERATIONS) AS WOULD PAN AMERICAN AND NORTHWEST IF THEY WERE INTERESTED IN LIVE-STOCK TRAFFIC. THE SUPPLEMENTALS' DILEMMA, FTL CONTENTS, STEMS FROM TWO SOURCES--THE LIMITED NUMBER OF SLOTS ALLOTTED FOR NON-SCHEDULED OPERATIONS AND THE SUPPLEMENTAL CARRIERS INABILITY TO GENERATE LEGITIMATE EASTBOUND CARGO CHARTER TRAFFIC--THEREBY RENDERING THEIR WESTBOUND SERVICES ECONOMICAL. FTL TAKES NO POSITION ON PASSENGER CHARTER OPERATIONS. BASED UPON THE FOREGOING, FTL STATES THAT IMPLEMENTATION OF THE BOARD'S PROPOSED POLICY WILL RESULT ONLY IN RETALIATION AGAINST U.S. CARRIER SCHEDULED SERVICE WITH NO BENEFIT TO SUPPLEMENTAL CARRIERS.

ON APRIL 7 1977, TRANS INTERNATIONAL AIRLINES, INC (TIA)  
ON APRIL 7, 1977, TRANS INTERNATIONAL AIRLINES, INC. (TIA)  
AND WORLD AIRWAYS, INC. (WORLD) JOINTLY FILED AN ANSWER TO JAL'S PETITION. TIA AND WORLD OPPOSE JAL'S ARGUMENTS, CLAIMING THAT THE JAPANESE GOVERNMENT IS OBLIGATED TO PERMIT SUPPLEMENTAL CARRIER OPERATIONS WITHIN THE PRESCRIBED QUOTA, AND THEIR FAILURE TO DO SO UNDER THE GUISE OF CONGESTION AT HANEDA CONSTITUTES A LACK OF RECIPROCITY.

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THE SUPPLEMENTAL CARRIERS, HOWEVER, CONTEND THAT THE BOARD'S PROPOSED POLICY WILL BE INEFFECTIVE IN CORRECTING THE SITUATION, SINCE JAL CAN EASILY CIRCUMVENT THE EFFECT OF THE POLICY BY DIVERTING ITS FLIGHTS TO AIRPORTS OTHER THAN HANEDA, WHILE STILL USING THE AVAILABLE SLOTS AT HANEDA FOR THE REQUIRED TECHNICAL STOPS. ACCORDINGLY, THE SUPPLEMENTALS CONTEND THAT THE BOARD SHOULD DENY ALL FUTURE OFF-ROUTE (IF NOT ALSO ON-ROUTE) CHARTER OPERATIONS BY JAL UNTIL THE JAPANESE GOVERNMENT ACCORDS U.S. SUPPLEMENTAL CARRIER OPERATIONS EQUITABLE TREATMENT. IN ADDITION, TIA AND WORLD CLAIM THAT JAL HAS BEEN AFFORDED AMPLE NOTICE OF THE BOARD'S PROPOSED ACTION, AND THUS, OPERATIONS CONTRACTED FOR PRIOR TO THE EFFECTIVE DATE OF THE PROPOSED POLICY SHOULD NOT BE EXCLUDED FROM THE POLICY'S EFFECTIVENESS AS JAL REQUESTS.

UPON CONSIDERATION OF JAL'S ALLEGATIONS, THE ANSWERS THERETO, AND ALL RELEVANT CIRCUMSTANCES, PARTICULARLY THE DISCUSSIONS WITH THE JAPANESE DURING THE WEEK OF APRIL 4, 1977, WE HAVE DECIDED TO GRANT JAL'S PETITION TO THE EXTENT THAT WE WILL DEFER THE PROPOSED EFFECTIVE DATE UNTIL JUNE 15, 1977.

BASED UPON INFORMATION PRESENTED BY ALL PARTIES, WE ARE CONVINCED THAT SOME OF THE FACTUAL BASIS FOR OUR TENTATIVE CONCLUSIONS IS NOT ENTIRELY VALID. IT APPEARS THAT BLOCKING OFF SCHEDULED FLIGHTS IS A FAIRLY COMMON PRACTICE IN MARKETS WHERE TRAFFIC IS HEAVILY IMBALANCED IN ONE DIRECTION. THUS, IT DOES NOT APPEAR THAT JAL'S BLOCKING OFF PRACTICE WAS AN IRREGULAR PRACTICE RAISING QUESTIONS ABOUT THE NATURE OF ITS SCHEDULED SERVICE OR GIVING IT AN UNWARRANTED FLEXIBILITY AS WE HAD PREVIOUSLY THOUGHT. ACCORDINGLY, WE DO NOT BELIEVE THAT A POLICY OF DENYING OFF-ROUTE APPLICATIONS FILED BY JAL FOR OPERATIONS THE SLOT TIME FOR WHICH BECAME AVAILABLE AS A RESULT OF  
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BLOCKING OFF SCHEDULED FLIGHTS IS WARRANTED IN THESE CIRCUMSTANCES.

NEVERTHELESS, OUR FUNDAMENTAL CONCERN HAS BEEN AND CONTINUES TO BE THE EFFECT THE SLOTTING PROCEDURES ADMINISTERED BY THE JCAB HAVE HAD ON THE OPERATIONS OF THE U.S. SUPPLEMENTAL AIR CARRIERS, THAT IS, THE EXCLUSION OF THESE CARRIERS IN THE U.S.-JAPAN CHARTER MARKET. WHILE THE BLOCKING OFF TECHNIQUE MAY BE AN ACCEPTABLE PRACTICE, IT

REMAINS APPARENT THAT THE EARLY DENIALS AND SUBSEQUENT UNCERTAINTY CONCERNING SLOT TIME HAS DIVERTED THE SUPPLEMENTALS' TRAFFIC TO THE SCHEDULED CARRIERS WHO COULD ASSURE CHARTERERS OF THEIR ABILITY TO PERFORM THE REQUESTED FLIGHTS. IN THIS REGARD, WE NOTE THAT WHILE THERE HAVE

BEEN NO RECENT DENIALS OF SUPPLEMENTAL CARRIER OPERATIONS, THERE ALSO HAS BEEN ONLY ONE APPLICATION FILED BY A SUPPLEMENTAL CARRIER SINCE DECEMBER 1976, BECAUSE OF THE INABILITY OF THESE CARRIERS TO ASSURE CHARTERERS THAT LANDING SLOTS WOULD BE AVAILABLE FOR THE REQUESTED OPERATION. THUS, WHILE THE JAPANESE GOVERNMENT HAS AUTHORIZED THE SUPPLEMENTALS TO COMPETE IN THE U.S.-JAPAN CHARTER MARKET BY AUTHORIZING A QUOTA OF 70 FLIGHTS PER YEAR, AS A PRACTICAL MATTER THE SLOTTING PROCEDURES EFFECTIVELY PRECLUDE THE SUPPLEMENTALS FROM PURSUING THE BUSINESS OPPORTUNITIES THEY HAVE BEEN AUTHORIZED TO SEEK.

AS JAL AND THE JAPANESE GOVERNMENT ARE AWARE, THE UNITED STATES GOVERNMENT FEELS VERY STRONGLY THAT THE RIGHTS OF ALL U.S. CARRIERS BE TREATED EQUALLY. ACCORDINGLY, WE RETAIN OUR VIEW THAT BECAUSE THE SLOTTING PROCEDURES CONSTITUTE A DENIAL OF EQUITABLE ACCESS TO U.S. SUPPLEMENTALS IT MAY NOT BE POSSIBLE TO MAKE THE FINDING OF RECIPROCITY WITHIN THE CONTEXT OF SECTION 212.6 OF THE BOARD'S ECONOMIC REGULATIONS, WHICH IS NECESSARY IF OFF-ROUTE CHARTER AUTHORITY IS TO BE GRANTED TO JAL WITH LIMITED OFFICIAL USE  
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RESPECT TO OPERATIONS BETWEEN THE UNITED STATES AND TOKYO, AND BETWEEN THE UNITED STATES AND OTHER JAPANESE POINTS WHICH INVOLVE A TECHNICAL STOP AT HANEDA, SINCE SUCH OPERATIONS ALSO UTILIZE AVAILABLE SLOT TIME. HOWEVER, FOR THE FOLLOWING REASONS, WE HAVE DECIDED TO DEFER IMPLEMENTATION OF A POLICY OF DENYING OFF-ROUTE CHARTERS FOR AN ADDITIONAL PERIOD OF TIME.

SINCE IT IS PRIMARILY THE SUPPLEMENTALS' INABILITY TO ASSURE CHARTERERS THAT SLOT TIME WILL BE MADE AVAILABLE TO THEM AT HANEDA WHICH HAS CLOSED THE SUPPLEMENTAL CARRIERS OUT OF THE U.S.-JAPAN CHARTER MARKET, IT IS OUR VIEW THAT THE REESTABLISHMENT OF THESE CARRIERS IN THE MARKET CAN ONLY BE ACCOMPLISHED IF THERE IS SOME EFFECTIVE METHOD FOR ASSURING THAT SLOT TIME WILL BE MADE AVAILABLE TO THESE CARRIERS ON AN EQUITABLE BASIS. SEVERAL POSSIBLE TECHNIQUES IN WHICH THIS GOAL COULD BE ACHIEVED WERE DISCUSSED IN THE RECENT DISCUSSIONS WITH THE JAPANESE AUTHORITIES. THESE AUTHORITIES AGREED TO STUDY THESE TECHNIQUES FURTHER. THE UNITED STATES AGREED TO CONSIDER THE POSSIBILITY OF AUTHORIZING ARRANGEMENTS BETWEEN THE U.S. SCHEDULED AND SUPPLEMENTAL CARRIERS MAKING THE

FORMER'S UNUSED SLOTS AVAILABLE TO THE LATTER. WE ARE HOPEFUL THAT THESE SEPARATE ENDEAVORS WILL MOVE PROMPTLY TOWARD A MUTUALLY AGREEABLE SOLUTION, WHICH WILL AFFORD SUPPLEMENTAL CARRIERS AN EFFECTIVE OPPORTUNITY TO OPERATE WITHIN THE QUOTA AUTHORIZED BY THE JAPANESE GOVERNMENT. THEREFORE, WHILE THERE WAS NO RESOLUTION OF THIS SITUATION

IN THE APRIL TALKS, WE BELIEVE THAT SUFFICIENT PROGRESS WAS MADE TO WARRANT DEFERRAL OF OUR PROPOSED POLICY UNTIL JUNE 15, 1977, AFTER THE UNITED STATES AND JAPAN HAVE HAD ANOTHER OPPORTUNITY TO DISCUSS AN AGREEABLE SOLUTION.

BASED ON THE FOREGOING, THE BOARD GRANTS, TO THE EXTENT INDICATED, JAL'S PETITION FOR RECONSIDERATION OF THE LIMITED OFFICIAL USE  
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BOARD'S MARCH 14, 1977, LETTER, AND WITHDRAWS ITS PROPOSED POLICY TO DENY APPLICATIONS FILED BY JAL FOR OFF-ROUTE OPERATIONS BETWEEN THE UNITED STATES AND HANEDA, THE SLOT TIME FOR WHICH BECAME AVAILABLE BY BLOCKING OFF ONE OF JAL'S SCHEDULED FLIGHTS WHICH WAS TO BE EFFECTIVE APRIL 15, 1977. HOWEVER, FOR THE REASONS SET FORTH ABOVE, THE BOARD RETAINS ITS VIEW THAT THE SLOTTING PROCEDURES AT HANEDA ADMINISTERED BY THE JCAB DO NOT PERMIT EQUITABLE ACCESS TO U.S. SUPPLEMENTAL CARRIERS, THEREBY PRECLUDING A FINDING OF RECIPROCITY WITHIN THE CONTEXT OF SECTION 212.6. THEREFORE, IT REMAINS THE BOARD'S INTENTION TO DENY OFF-ROUTE CHARTER APPLICATIONS FILED BY JAL FOR OPERATIONS BETWEEN THE UNITED STATES AND JAPAN WHICH SERVE HANEDA FOR EITHER TRAFFIC OR TECHNICAL PURPOSES. WE ARE DEFERRING THE EFFECTIVENESS OF THIS POLICY, HOWEVER, UNTIL JUNE 15, 1977, TO PROVIDE ADDITIONAL TIME FOR REACHING A MUTUAL AGREEMENT CONCERNING SUPPLEMENTAL AIR CARRIER OPERATIONS.

IN ADDITION, WE HAVE DECIDED NOT TO EXCLUDE FROM THE EFFECTIVENESS OF OUR PROPOSED POLICY OPERATIONS CONTRACTED BY JAL PRIOR TO JUNE 15, 1977, FOR OPERATIONS THEREAFTER. JAL AND THE JAPANESE GOVERNMENT HAVE HAD MORE THAN AMPLE NOTICE OF THE BOARD'S CONCERN OVER THE SUPPLEMENTALS' SITUATIONS AND OUR INTENDED ACTION TO CORRECT THIS SITUATION. FOR THE CIVIL AERONAUTICS BOARD: PHYLLIS T. KAYLOR, SECRETARY.

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## Message Attributes

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